

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JEFFERSON-PILOT LIFE INSURANCE	:	
COMPANY,	:	Case No. C-1-02-479
	:	
Plaintiff,	:	(Judge Spiegel)
	:	(Magistrate Judge Hogan)
vs.	:	
	:	
CHRISTOPHER L. KEARNEY,	:	
	:	
Defendant.	:	
	:	

**PLAINTIFF'S REQUEST FOR ORAL ARGUMENT ON ITS MOTION FOR
SUMMARY JUDGMENT OR IN THE ALTERNATIVE PERMISSION TO FILE A
REPLY BRIEF IN SUPPORT OF SUCH MOTION**

Now comes the Plaintiff Jefferson-Pilot Life Insurance Company ("Jefferson-Pilot"), by and through counsel, and respectfully moves this Honorable Court for an oral argument on its Motion for Summary Judgment or in the alternative permission to file a reply brief in support of such Motion for the reasons stated in the Memorandum attached hereto.

Respectfully submitted,

s/William R. Ellis

William R. Ellis (0012279)
Peter M. Burrell (0044139)
Amy Gasser Callow (0063470)
Wood & Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202-2409
(513) 852-6000

Trial Attorneys for Plaintiff
Jefferson-Pilot Life Insurance Company

MEMORANDUM

In the normal course of practice, the party filing a Motion for Summary Judgment is permitted to present his/her argument first and is given an opportunity to reply to the opponent's response. Such was the procedure afforded to Defendant Christopher L. Kearney ("Mr. Kearney") in this case.

The Court, recognizing that Plaintiff Jefferson-Pilot was not afforded the same opportunity with regard to its Motion, the Court offered to continue the matter and hold a second oral argument to provide equal opportunity to Jefferson-Pilot. (*See* Transcript of argument at p. 76 attached to the Defendant's responsive brief).

Counsel for Mr. Kearney raised concerns for the trial date which he wanted to hold firm for "personal reasons". (*Id.* at p. 77). As an accommodation to a fellow member of the bar and to the Court, Jefferson-Pilot's counsel suggested post-argument briefs in lieu of the additional argument date. (*Id.* at p. 78). Both counsel and the Court agreed that the briefs would be filed "simultaneously" so that neither party would have the advantage of responding to the opponent's brief. (*Id.* at pp. 79-80).

Counsel for Mr. Kearney breached the agreement to file simultaneous briefs by waiting until Jefferson-Pilot filed its brief and then responded to those arguments in his responsive (rather than simultaneous) brief filed seven (7) hours later at 11:49 p.m. There is no question that this brief is responsive, rather than simultaneous, because Mr. Kearney's counsel actually cites to the plaintiff's brief on page 12 of his response.

Given the Court's recognition of the fairness issue (*Id.* p. 77) and counsel's breach of the simultaneous filing agreement (*Id.* p. 80), Jefferson-Pilot respectfully requests this Court to set an additional oral argument date or, in the alternative, permit Jefferson-Pilot to file a reply brief to

respond to the statements taken out of context, unsupported speculation, and misstatements contained in Mr. Kearney's response.

In ruling on this Motion the Court should consider the essential fairness of accepting a brief filed in response to another, when the agreement in open court was for simultaneous briefing. Plaintiff Jefferson-Pilot Life Insurance Company respectfully submits that Defendant Christopher L. Kearney, through his counsel, has taken an unfair advantage and respectfully requests that this Court neutralize the advantage by granting either an additional hearing date as stated on page 77 of the Transcript or, at a minimum, grant permission for Jefferson-Pilot to file an appropriate reply brief.

Respectfully submitted,

s/William R. Ellis

William R. Ellis (0012279)
Peter M. Burrell (0044139)
Amy Gasser Callow (0063470)
Wood & Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, OH 45202-2409
(513) 852-6000

Trial Attorneys for Plaintiff
Jefferson-Pilot Life Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed with the Court by electronic means on this 25th day of August, 2004. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ William R. Ellis

William R. Ellis

Trial Attorney for Plaintiff

Jefferson-Pilot Life Insurance Company

217169.1